IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 253 OF 2003

Shri Babasaheb D. Thorat & ors. ... Appellants

V/s

Shri Vinayak S. Sathe & ors. ... Respondents

Shri S. N. Chandrachud for the appellants.

Shri P. K. Hushing for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 5TH OCT., 2004.

P.C.:

1. This is an appeal filed by the appellants against the judgment and order passed by the Addl. District Judge, Pune, in Civil Appeal No.353 of 2001 dated 21.12.2001 allowing the appeal of the original defendant and setting aside the order passed by the Civil Court decreeing the suit for possession of the suit premises.

2. The plaintiffs filed the suit with allegation that the suit property was owned by him. It was purchased under auction on 29.7.1965 from Pune District Central Co-op. Bank. Defendant No.1 was tenant for a room on the ground floor. His mother deceased Tanhubai was

residing separate on the first floor. She was the mother of the plaintiff No.2 and mother-in-law of plaintiff No.1. In the year 1983, the plaintiffs obtained possession of two rooms on the ground floor from tenant Durve. Thereafter on the request of the Tanhubai, plaintiffs allowed her to occupy a room on the ground floor admeasuring 22 x 11 ft. out of the rooms received from Durve. Tanhubai started residing there with the plaintiffs' permission free of charge as licensee. The room was adjacent to the rented room occupied by the defendant No.1. In other words, it is the claim of the plaintiffs that said Tanhubai was guardian licensee in the suit room and after her death, defendant No.1 has occupied it illegaly and, therefore, suit for possession came to be filed.

The defendants challenged the suit on the ground that the suit room was also a tenancy property for which rent used to be paid and, therefore, it was submitted that the lower Court had no jurisdiction to entertain the suit as contemplated under Rule 28 of the Bombay Rent Act. On the basis of evidence on record, the Trial Judge came to the conclusion that the defendant is a permissible user of the suit property and, therefore, suit claim came to be allowed.

3. The appeal was carried to the District Court. The learned Addl. District Judge adjudicated the dispute on merits and on the basis of merits came to the conclusion that actually the defendants' claim that, not one but both rooms were taken on rent, was acceptable in view of the evidence on record. This finding is based on attornment letter Exh.43. Therefore, on the basis of plaintiffs' evidence, the learned lower Appellate Court Judge came to the conclusion that it was hard to accept that deceased Tanhubai was gratituous licensee. In other words, it was held that the suit room was occupied by the defendant tentnats and, therefore, by virtue of Sec.28 of the Bombay Rent Act, Civil Judge, Jr. Divn. had no jurisdiction to entertain the suit and Court of Small Causes would be the proper Court of jurisdiction and, as such, the suit came to be dismissed.

4. At the outset, it may be noted that the lower Appellate Court appears to have appreciated the evidence correctly and properly which can be seen from the contents of paragraphs 13, 14, 15 & 16 of the judgment of the lower Court. Hence, it came to the conclusion that the suit room was a tenanted premises of the defendants and, therefore, the Civil Court at Pune had

no jurisdiction to entertain the suit. There is absolutely no substantial question of law found to be involved. If we apply the ratio in the case of **Kondiba Dagadu Kadam v/s Savitribai sopan Gujar, reported 1999 SCC 2213,** laid down by the Apex Court, it is clear that the conditions mentioned in Sec. 100 must be strictly fulfilled before a second appeal can be maintained and no Court has power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower Appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. This is especially so, when the conclusions drawn by the lower Courts are found to be reasonable and proper on the basis of available evidence.

In the result, the appeal has to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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